

REGULATIONS

COMMISSION REGULATION (EU) No 118/2011

of 10 February 2011

imposing a provisional anti-dumping duty on imports of certain ring binder mechanisms originating in Thailand

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ (the basic Regulation), and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Initiation

- (1) On 20 May 2010, the European Commission (the 'Commission') announced by a notice published in the *Official Journal of the European Union* ⁽²⁾ (Notice of initiation), the initiation of an anti-dumping proceeding concerning imports into the Union of certain ring binder mechanisms originating in Thailand (country concerned).
- (2) The anti-dumping proceeding was initiated following a complaint lodged on 6 April 2010 by Ring Alliance Ringbuchttechnik GmbH (the complainant) on behalf of producers representing a major proportion, in this case more than 50 % of the total Union production of certain ring binder mechanisms. The complaint contained prima facie evidence of dumping of the said product and of material injury resulting there from, which was considered sufficient to justify the initiation of a proceeding.

1.2. Parties concerned by the proceeding

- (3) The Commission officially advised the complainant, other known Union producers, the known exporting producers in Thailand, the representatives of the country concerned, known importers and known users of the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the Notice of initiation. All interested parties who so requested and showed that there were particular reasons why they should be heard were granted a hearing.

(4) The Commission sent questionnaires to all parties known to be concerned and to all other parties that requested so within the deadlines set out in the Notice of initiation, namely the complainant, other known Union producers, the known exporting producer in Thailand, the representatives of the country concerned, known importers and known users. All parties who so requested within the time limit and indicated that there were particular reasons why they should be heard were granted a hearing.

(5) Replies to the questionnaires and other submissions were received from one exporting producer in Thailand, the complainant Union producer, five unrelated importers and traders (including one also producing in the Union) and one user.

(6) The Commission sought and verified all the information it deemed necessary for the purpose of a provisional determination of dumping, resulting injury and Union interest. Verification visits were carried out at the premises of the following companies:

(a) Union producer:

— Ring Alliance Ringbuchttechnik GmbH, Vienna, Austria

(b) exporting producer in Thailand:

— Thai Stationery Industry Co. Ltd., Bangkok, Thailand

(c) companies related to the exporting producer in Thailand:

— Wah Hing Stationery Manufactory Limited, Hong Kong

(d) importers in the Union:

— Giardini S.r.l., Settimo Milanese, Italy

— Rendol enterprises, Reilingen, Germany

— Industria Meccanica Lombarda srl, Offanengo, Italy (also producer in the Union)

— Winter Company Spain S.A., Spain

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ C 131, 20.5.2010, p. 13.

1.3. Investigation period and period considered

- (7) The investigation of dumping and injury covered the period from 1 April 2009 to 31 March 2010 (the 'investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2006 to the end of the IP (the injury investigation period).

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

- (8) The product concerned is ring binder mechanisms which consist of at least two steel sheets or wires with at least four half-rings made of steel wire fixed on them and which are kept together by a steel cover, they can be opened either by pulling the half rings or with a small steel trigger mechanism fixed to the ring binder mechanism, originating in Thailand ('the product concerned' or 'RBM') and currently falling within CN code ex 8305 10 00. Lever-arch mechanisms, falling within the same CN code, are not included in the scope of this investigation.
- (9) RBM are used to file different kinds of documents or papers. They are used, inter alia, by producers of ring binders, technical manuals, photo and stamp albums, catalogues and brochures.
- (10) A large number of different models of RBM were sold during the IP in the European Union. The models varied by size, shape and number of rings, the size of the base plate and the system to open the rings (pull open or opening trigger). Given that all of them have the same physical and technical characteristics, and that the models of RBM can, within certain ranges, replace each other, the Commission established that all RBM constitute one single product for the purpose of the present proceeding.

2.2. Like product

- (11) The product produced and sold on the domestic market of Thailand, as well as the product manufactured and sold in the Union by the Union producers were found to have the same basic physical and technical characteristics as well as the same basic uses. They are therefore provisionally considered as alike within the meaning of Article 1(4) of the basic Regulation.

3. SAMPLING

3.1. Sampling of unrelated importers

- (12) In view of the apparent high number of unrelated importers, sampling was envisaged in the Notice of initiation in accordance with Article 17 of the basic Regulation. In order to enable the Commission to decide whether sampling would be necessary and if so, to select a sample, all known unrelated importers were

asked to make themselves known to the Commission and to provide, as specified in the Notice of initiation, basic information on their activities related to the product concerned (as defined in Section 2.1 above) during the period from 1 April 2009 to 31 March 2010.

- (13) After examination of the information submitted and given the low number of importers which indicated their willingness to co-operate, it was decided that sampling was not necessary.

4. DUMPING

- (14) One company in Thailand replied to the questionnaire for exporting producers. A company involved in the sales of the product concerned and located in Hong Kong related to this exporting producer also replied to the questionnaire. On the basis of import data reported by Eurostat, the exporting producer (together with its related company) accounted for all Thai exports to the Union.

4.1. Normal value

- (15) The investigation revealed that the exporting producer provided incomplete and incorrect information with regard to significant elements of its cost of production, such as the apparent nickel metal consumption and apparent consumption of other raw materials. Furthermore, other data reported with regard to production costs and production capacities were inconsistent and could not be reconciled. Finally, the investigation revealed that there was a related company located in the People's Republic of China, which contrary to what was originally claimed by the exporting producer, was involved in the sales and administration of the product concerned. The reported costs did not include the relevant costs of this related company and were therefore considered incomplete.
- (16) On the basis of the above, it was concluded that the cost data submitted were not a sufficiently accurate basis for the determination of normal value. It was therefore considered to base findings at least partially on facts available in accordance with Article 18 of the basic Regulation.
- (17) The company was informed forthwith and was given the opportunity to provide further explanations, in accordance with Article 18(4) of the basic Regulation. However, the explanations given by the company were unsatisfactory since it did not clarify the inconsistencies found. The company could also not refute the evidence showing that they had submitted incomplete, incorrect and misleading information. Moreover, the company failed to submit essential information of the above mentioned related company established in the People's Republic of China involved in the production and sales of the product concerned.

(18) In view of the above, it was considered that the normal value for the exporting producer should provisionally be determined on the basis of facts available, in accordance with Article 18 of the basic Regulation.

(19) In the absence of any other more reliable information, the normal value was provisionally calculated on the basis of the information relating to the cost of manufacturing in Thailand as provided in the complaint. In accordance with Article 18(5) of the basic Regulation, this information was cross-checked with verified information obtained during the investigation, including that relating to costs of personnel and energy in Thailand. Where considered appropriate, the information provided in the complaint was corrected by the verified information obtained during the investigation.

(20) A reasonable amount for SG&A and profits, respectively 16 % and 8 % were added to the manufacturing cost as established above, on the basis of the information submitted in the complaint.

4.2. Export price

(21) The exporting producer made export sales to the Union through its related trading company located outside the Union.

(22) The export price was established on the basis of the prices of the product when sold by the related trading company to the Union, i.e. to an independent buyer, in accordance with Article 2(8) of the basic Regulation on the basis of prices actually paid or payable.

4.3. Comparison

(23) The comparison between normal value and export price was made on an ex-works basis.

(24) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. Adjustments for differences in transport and insurance costs and credit costs have been made where applicable and justified.

4.4. Dumping margin

(25) Pursuant to Article 2(11) and (12) of the basic Regulation, the dumping margin for the cooperating exporting producer was established on the basis of a comparison of a weighted average normal value by product type with a weighted average export price by product type as established above.

(26) On the basis of the above methodology the provisional dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Exporting producer	Dumping margin
Thai Stationery Industry Co. Ltd., Bangkok, Thailand	17,2 %

(27) Since the cooperating exporting producer accounted for all Thai exports to the Union of the product concerned, it was considered that the residual dumping margin should be set at the level of dumping margin found for this cooperating exporting producer, i.e. 17,2 %.

5. DEFINITION OF THE UNION INDUSTRY

(28) During the investigation period RBM were manufactured in the EU by the following producers:

— Ring Alliance Ringbuchtechnik GmbH, Wien, Austria,

— Industria Meccanica Lombarda srl, Offanengo, Italy.

(29) The first producer is the applicant and cooperated in the investigation. The investigation has established that the applicant represented more than 50 % of the total Union production of RBM in the IP.

(30) The second (smaller) producer is also an importer of RBM from Thailand and opposed the proceedings. On the basis of the information provided by the company, it was found that during the overall period considered for the injury analysis the volume of its purchases of Thai products was on average comparable to the volume of its own production.

(31) On the basis of the above it is considered that, pursuant to Article 4(1)(a), the second producer should be excluded from the definition of the Union industry, and therefore only the applicant producer should constitute the Union industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation. It is hereinafter referred to as the 'Union industry'.

(32) It should be noted that in the past, the Union industry was originally composed of two different producers (Koloman Handler — Austria and Robert Krause — Germany) that went bankrupt and taken over by an Austrian group. These companies were subject to a significant restructuring and the current structure 'Ring Alliance Ringbuchtechnik GmbH' was created in 2003. The head offices are located in Austria while production takes place in Hungary.

6. INJURY

6.1. Union consumption

(33) Consumption was established on the basis of the following figures:

- the verified total sales on the Union market reported by the Union industry and the other EU producer,
- the verified total EU export volume of the cooperating exporting producer in Thailand for the periods requested in the questionnaire (the years 2008, 2009 and IP), and Eurostat for the other years,
- Eurostat for imports from the other third countries.

(34) On this basis, the EU consumption of RBM developed as follows:

	2006	2007	2008	2009	IP
Consumption (000pces)	100	100	111	93	95

Source: verified questionnaire replies and Eurostat.

(35) The consumption declined by 5 % during the overall injury investigation period ⁽¹⁾. It should however be noted that after an increase of around 10 % between 2006 and 2008, the consumption dropped by 15 % in the subsequent period.

6.2. Imports from Thailand

(a) *Import volume and market share*

	2006	2007	2008	2009	IP
Import volume	100	65	153	116	119
Market share	12,0 %	7,8 %	16,5 %	15,0 %	15,0 %

Source: verified questionnaire reply and Eurostat.

(36) Imports from Thailand for the period 2008-IP are based on the questionnaire reply of the cooperating exporting producer — the sole known Thai exporter — and based on Eurostat data for the other years. On this basis, it was established that total import volume of RBM from Thailand increased by almost 20 % between 2006 and the IP. The level of imports however fluctuated significantly during this period, and the most important increase took place between 2007 and 2008, when imports more than doubled.

(37) The Thai market shares followed an overall increasing trend and gained 3 points between 2006 and the IP. Similarly to the sales volume, the market shares reached a peak in 2008, at a level of 16,5 %.

(b) *Price of the imports of the product concerned/undercutting*

	2006	2007	2008	2009	IP
import price	100	103	123	113	113

⁽¹⁾ Only ranges are given in order to protect confidentiality of sole Complainant.

- (38) Import prices first increased by more than 20 % between 2006 and 2008 and declined subsequently.
- (39) Despite an overall increase of 13 % during the injury investigation period, the Thai prices significantly undercut the Union producers' prices during the IP. The price comparison for corresponding models, duly adjusted where necessary, indeed showed that on average import prices were more than 30 % below the Union industry's sales price during the IP. A comparison of the average price level during the other years suggests comparable undercutting rates for the years 2006-2009.
- (40) The absolute level of Thai import prices was also systematically below the price of other imports and — to a larger extent — below the price of the other Union producer.

6.3. Economic situation of the Union industry ⁽¹⁾

(a) Production, production capacity and capacity utilisation

	2006	2007	2008	2009	IP
Production	100	130	131	80	83
Production capacity	100	110	115	80	75
Capacity utilisation	79 %	94 %	90 %	79 %	88 %

- (41) During the overall period, both the production and the production capacity decreased respectively by almost 20 % and 25 %. The increasing capacity utilisation should only be seen as the result of a reduction of the production capacity by 25 % during the same period. This is mainly the result of lay-offs (see employment below).
- (42) It should however be noted that production volume and capacity first improved until 2008, and then decreased significantly.

(b) Stocks

	2006	2007	2008	2009	IP
Closing stock	100	137	153	124	126

- (43) In the injury investigation period, the Union industry's stocks increased overall by 26 %. A significant part of the RBM production consists of standard products, and the Union industry has to maintain a certain level of stock in order to be in a position to swiftly satisfy the demand of its customers. Any increase of the closing stock above the average level nevertheless indicates difficulties to sell the products.

(c) Sales volume, market share and growth

	2006	2007	2008	2009	IP
EU sales volume	100	105	113	79	77
Market shares	29,6 %	31,1 %	30,2 %	25,2 %	24,0 %

- (44) The Union industry's sales volume on the EU market decreased by 23 % over the period analysed, which corresponded to declining market shares from 29,6 % to 24,0 %, i.e. a drop of more than 5 points. Sales volume and market shares in fact deteriorated as from 2008.

⁽¹⁾ The information is based on the verified data submitted by the Union industry in its questionnaire reply and is given in index numbers (2006 = 100) or in a range whenever it is necessary to preserve confidentiality.

- (45) The above development overall indicates an absence of Union industry growth between 2006 and the IP.

(d) *Sales prices*

	2006	2007	2008	2009	IP
Sales price	100	99	99	110	107

- (46) The Union Industry's weighted average selling price was relatively stable until 2008. It then increased by 10 % in 2009 to decrease by 3 percentage points in the IP. This price increase is the result of a combination of two factors: a change of product mix due to the decreasing sales volume of the more standardised — and cheaper — products, and the Union industry's attempt to compensate for the losses incurred in 2008. The latter was however not successful since the Union industry continued to operate at a loss in the subsequent period (see below).

(e) *Profitability, return on investments, cash-flow*

	2006	2007	2008	2009	IP
P&L % turnover	100	9	135	167	146
Cash-flow	100	- 502	- 685	- 136	- 291
Return on net assets	100	87	104	146	176

- (47) The Union industry was loss making during the overall injury investigation period, and the above trend shows an overall increase of the level of losses. While the situation slightly improved in 2007 (it became nearly break even), it however deteriorated as from 2008. While the decline in cash-flow could somehow be limited, it also remained negative as from 2007. The return on net assets was also negative during the overall period and constantly declined between 2006 and the IP.

(f) *Investments and ability to raise capital*

	2006	2007	2008	2009	IP
Investments	100	45	50	17	26

- (48) Investments followed a sharp decreasing trend, i.e. - 75 % during the overall injury investigation period.
- (49) As stated above, given the weak financial situation of Union industry it can be concluded that its ability to raise capital from independent sources was seriously affected.

(g) *Employment, productivity and wages*

	2006	2007	2008	2009	IP
Employment	100	111	118	99	87
Productivity	100	117	111	81	95
Wages	100	106	113	92	71

- (50) During the overall period employment (full-time units) decreased by 13 % and the most important decline took place after the year 2008 when employment reached a peak. Wages mostly followed the same trend.

- (51) Productivity, measured in thousand of pieces produced per employee during the period, generally followed the same trend as employment, but the decline could be limited during the IP.

(h) *Magnitude of the actual margin of dumping*

- (52) On the basis of the best facts available, the investigation has established the existence of dumping during the IP of 17,2 %, which is substantial.

(i) *Recovery from the effect of past dumping*

- (53) The Union industry has been suffering from the effects of dumped imports for several years. It could nevertheless benefit from relatively effective measures until the year 2008, but the situation deteriorated again thereafter. This is further explained in the section related to Union interest below.

6.4. Conclusion

- (54) The economic situation of the Union industry clearly deteriorated between 2006 and the IP. This was especially characterised by a significant decrease of production and sale volume (respectively – 17 %, – 13 %), which also resulted in decline of market share from 29,6 % to 24 %. The financial situation of the Union Industry was also affected. The level of losses incurred by the company indeed increased, and both cash-flow and return on net assets followed the same negative trend. The attempt of the Union industry to limit the level of the losses by increasing its prices in 2009 was not successful, and the situation even worsened.
- (55) Consequently, the investments were reduced to their minimum level, and the company had no choice but to lay off a substantial number of people in order to face the situation.
- (56) It should nevertheless be noted that during the overall injury investigation period the situation of the Union industry somewhat improved between 2006 and 2008. Indeed, during this period, production, sales volume, and employment followed an increasing trend. Those indicators however significantly dropped since 2009. The profitability indicators on the other hand remained negative during the overall period; although profitability was close to break even in 2007.
- (57) Considering the above, it is provisionally concluded that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

7. CAUSALITY

7.1. Introduction

- (58) In accordance with Article 3(6) and (7) of the basic Regulation, it was examined whether the material injury suffered by the Union industry has been caused by the dumped imports from the country concerned. Furthermore, known factors other than the dumped imports, which might have injured the Union industry, were examined to ensure that any injury caused by those other factors was not attributed to the dumped imports.

7.2. Effect of the dumped imports

- (59) It is to be noted that the Union market is characterised by a relatively small number of sources of supply (two in the Union, one in India, one in Thailand and still some supply from China) and that the market is therefore quite transparent in terms of prices, through price quotations. Furthermore a significant part of the demand in the EU concerns standard types of RBM, for which price is by far a decisive factor when purchasing the product.

- (60) In this context, the investigation showed that the volume of imports of RBM from Thailand increased by almost 20 % during the injury investigation period, and reached a market share of 15 % during the IP. The Union industry lost a significant volume of sales during the same period. Furthermore it was established that, during the IP, RBM from Thailand undercut the Union industry's prices by more than 30 %, which is very significant for this kind of product.
- (61) The combination of the important volume of import and of the low price level led to a significant price pressure on the Union market. In the absence of dumping, Thai prices would have been — at least during the IP — almost 20 % higher than their actual level, and this could have meant an overall higher Union market price.
- (62) Given their volume and the level of their prices, it is thus considered that the dumped imports undermined the attempt of the Union industry to regain profit, or at least reduce its losses, by increasing its sales quantities and/or prices to a more adequate level during the period 2009-IP. The continued pressure exercised by the low-priced dumped imports from Thailand on the Union market thus resulted in the loss in sales volume, market shares, depressed prices and consequently the loss in profitability of the Union industry.
- (63) It should be recalled that in a recent expiry review investigation ⁽¹⁾ it was concluded that the industry was still in a very precarious situation in 2008 and still extremely sensitive to any further dumped imports.
- (64) In view of the above it was provisionally concluded that the dumped imports from Thailand had a negative impact on the economic situation of the Union industry.

7.3. Effect of other factors

7.3.1. Contraction in demand on the Union market

- (65) The demand on the Union market increased by 10 % in 2008, but then significantly declined in the subsequent year, by around 15 %. This should be seen in the context of the financial crisis, and the decision of many companies to cut general costs, including for stationary items. The overall ring binder sector has suffered from this situation: Indian and Thai imports decreased in absolute volume as well as the Union industry's sales.
- (66) It should however be noted that in relative terms, the Union industry suffered more than other players since its market share declined from 30,2 % to 25,2 % between 2008 and 2009. Given the fact that the ring binder industry has important fixed costs, a loss of volume of sales had a negative impact on the financial situation of the applicant. However, the decrease in consumption should be seen in conjunction with the development of the dumped imports from Thailand. Indeed, Thai imports had an important market share that represented nearly three times the quantity corresponding to the decrease in consumption.
- (67) From this point of view, it can be concluded that the decrease in consumption, which had been caused by the economic crisis, might have contributed to the material injury suffered by the Union industry. However, if there was an effect this effect had certainly been considerably reinforced by the imports subject to investigation.

7.3.2. Imports from other third countries

- (68) RBM are also produced and exported from India and China. These imports developed as follows:

⁽¹⁾ Implementing Regulation of the Council (EU) No 157/2010 (OJ L 49, 26.2.2010, p. 1).

	2006	2007	2008	2009	IP
India					
import volume	100	93	102	88	91
market shares	47,6 %	44,3 %	43,5 %	45,2 %	45,3 %
average price	100	99	118	116	113
China					
import volume	100	91	153	150	151
market shares	3,5 %	3,1 %	4,8 %	5,6 %	5,5 %
average price	100	98	90	85	86

Source: Eurostat.

(69) There is only one exporting producer of RBM in India, and its import volume decreased by almost 10 % during the injury investigation period. India nevertheless accounts for a significant portion of the Union market since it held on average 45 % of market shares during the injury investigation period. Furthermore, Indian import prices increased overall by 13 %, at a level slightly above the Thai prices. Given its prevailing position on the Union market, and in view of its competitive import price, India is a significant competitor for the Union industry. However, when looking at the trend described above, i.e. decreasing volume at increasing prices, there is no indication that India would have contributed to the deterioration of the situation of the Union industry in the IP. Finally, it should be noted that a certain portion of the Indian imports, i.e. around one third, has been directly purchased and sold on the Union market by a distributor related to the Union industry.

(70) Chinese imports have been subject to anti-dumping duties ranging from 51,2 % to 78,8 % since 2004. The volume of the Chinese imports increased by around 50 % between 2006 and IP, i.e. a market share gain of 2 points from 3,5 % to 5,5 %. Even if Chinese import prices followed a decreasing trend during the overall injury investigation period, their overall level however remained far above the Thai prices. And this is even without taking into account the application of the anti-dumping duties. It is thus concluded that these imports did not contribute to the deterioration of the situation of the Union industry in the IP.

(71) On the basis of the above, it is provisionally concluded that the imports from these third countries has not contributed, at least not beyond a marginal extent, to the material injury suffered by the Union industry.

7.3.3. Export performance of the Union industry

(72) Export performance was also examined as one of the known factors other than the dumped imports, which could at the same time have injured the Union industry.

(73) The exports of the Union industry represented on average around 5 % of its total sales of RBM during the injury investigation period and remained relatively stable. It is thus provisionally concluded that this could not have caused any injury to the Union industry.

7.4. Conclusion on causation

(74) The above analysis demonstrated that imports from Thailand caused material injury to the Union industry during the IP, given their volume and the level of their prices. Imports indeed increased in absolute terms, they were found to be dumped and their price level was found to be significantly below the prices charged by the Union industry on the Union market for similar product types. In this price sensitive market, where the number of suppliers is relatively limited and the market quite transparent, an undercutting rate of more than 30 % definitively had a significant impact on market prices.

(75) The examination of the other known factors which could have caused injury to the Union industry revealed that the contraction in demand could have played a role. However, despite the negative effect of the decreasing demand on the Union market, it is provisionally concluded that this factor was not such as to break the causal link established between the dumped imports from Thailand and the material injury suffered by the Union industry. The contraction in demand should indeed be seen in conjunction with the effects of dumped imports which actually exacerbated the negative impact of the financial crisis.

(76) Based on the above analysis, which has properly distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports, it is provisionally concluded that the dumped imports from Thailand have caused material injury to the Union industry within the meaning of Article 3(6) of the basic Regulation.

8. UNION INTEREST

8.1. Preliminary remark

(77) In accordance with Article 21 of the basic Regulation, it was examined whether, despite the provisional conclusion on injurious dumping, compelling reasons existed for concluding that it was not in the Union interest to adopt provisional anti-dumping measures in this particular case. For this purpose, and in accordance with Article 21(1) of the basic Regulation, the likely impact of possible measures on all parties involved in this proceeding and also the likely consequences of not taking measures were considered on the basis of all evidence submitted.

(78) In order to assess the likely impact of the measures, all interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation. The applicant Union producer and four unrelated importers replied to the questionnaire. The other Union producer, which is also an importer, provided some information and one user submitted a questionnaire reply.

8.2. Description of the Union market

(79) In order to have a better understanding of all the various interests at stake, it is considered important to first describe the main characteristics of the market.

(80) Anti-dumping measures were imposed for the first time against imports of certain ring binder mechanisms originating in China in 1997 ⁽¹⁾. The original duty rate was increased 3 years later following an interim review. Those measures have indeed been recently extended for a second time following an expiry review establishing that dumped and injurious imports would otherwise resume ⁽²⁾.

(81) Several investigations established that measures against China were circumvented, and they were thus extended to Vietnam and Lao People's Democratic Republic, respectively in 2004 and 2006, and the scope of the measures also had to be extended to certain slightly

modified RBM ⁽³⁾. It should finally be mentioned that imports of RBM from Thailand were subject to two different anti-circumvention investigations, in 2004 and 2008, and to a new anti-dumping investigation in 2008. While these investigations did not lead to any measures the current investigation has clearly established that the Thai exporter provided false information in his questionnaire reply.

(82) It should be noted that RBM are imported into the Union market either by distributors, agents or directly by users, i.e. the companies producing binders.

(83) Finally, it should be recalled that the number of producers of RBM supplying the Union market is relatively limited. Indeed, in addition to the two producers in the EU, there exist only one known producer in Thailand, one in India, and some in China, the latter being subject to anti-dumping measures as explained above. Both the exporting producer in Thailand and in India are owned by Hong Kong based companies, respectively Wah Hing Stationary, a trader of RBM having a production site in China, and World Wide Stationary, which has a supply agreement with Bensons, a distributor owned by the Union industry.

8.3. Union industry

(84) It is recalled that some years ago the Union industry already faced serious economic difficulties, amongst other things because of unfair traded imports, and had to restructure in order to ensure its continued existence as explained below.

(85) The Union industry actually consisted of two producers when the first anti-dumping complaint was lodged in 1995: Koloman Handler GmbH, an Austrian company, and Robert Krause GmbH & Co, a German company. Those two companies were present on the EU RBM market already for a long time but their economic situation became so bad that they both had to file for bankruptcy. While Robert Krause GmbH filed for bankruptcy in 1998 and its successor company had to do the same in 2002, Koloman Handler became insolvent in 2001. Both companies were taken over by another company, SX Bürowaren Produktions- und Handels GmbH, which in turn was acquired by Ring Alliance Ringbuchtechnik GmbH, the applicant in this case.

(86) Since then the activity has been restructured in order to better compete worldwide, but especially on the core market of the applicant, i.e. the EU market. This restructuring included the acquisition of Bensons, a well-established trader of RBM with companies located in the Netherlands, Singapore, the United Kingdom and the USA.

⁽¹⁾ Council Regulation (EC) No 119/97 (OJ L 22, 24.1.1997, p. 1).

⁽²⁾ Regulation (EU) No 157/2010.

⁽³⁾ Council Regulation (EC) No 818/2008 (OJ L 221, 19.8.2008, p. 1).

- (87) The efforts undertaken by the industry to improve its situation have however been undermined given that the positive effects of the measures against unfair imports have been diluted by absorption and circumvention practices, as explained above. As a consequence, despite significant improvement in particular until the year 2008, the situation of the industry remained fragile, as concluded in the investigation leading to the prolongation of the anti-dumping measures against China.
- (88) The current investigation concluded that in the recent years the Union industry is again suffering material injury and that this was caused by dumped imports originating in Thailand.
- (89) Through its restructuring efforts the Union industry proved it is a viable industry which is still in a position to supply an important share of the EU market. It however needs additional and efficient protection against dumped imports from all sources in order to reach a solid and healthy situation. Almost 60 jobs were lost between 2008 and the IP, and the Union industry made important losses in the last years. Without measures against Thai unfair traded imports it cannot be excluded that the applicant will be forced to cease its activity and more than 160 further jobs are at risk.
- (90) Given the fact that imports from Thailand were found to cause material injury to the Union industry, that the Union industry has made all necessary restructuring efforts and is able to compete on a market where imports are fairly traded, it is concluded that it would be in the interest of the Union industry to impose provisional measures against imports of RBM from Thailand.
- 8.4. Importers and traders**
- (91) Following the initiation of the investigation five importers, including the second Union producer, made themselves known and provided either a questionnaire reply or other information. Those companies accounted for 75 % of the imports of RBM from Thailand during the investigation period.
- (92) One of the above importers, representing around 20 % of the overall Thai imports, decided to end all its activities related to RBM after the investigation period. For a second importer, the sales volume of RBM has been divided by three during the overall injury investigation period and only represented a minor portion of its overall turnover during the IP (around 1 %). Moreover the latter ceased purchases from Thailand in 2008 and switched to an EU distributor. It is thus concluded that any imposition of measures would not affect the situation of those two importers.
- (93) Another importer, representing less than 10 % of the total Thai imports, claimed that if measures were imposed against Thailand, it would have no alternative sources of supply and would be forced to end their RBM activity. In this respect, it should firstly be recalled that the objective of anti-dumping measures is however not to exclude any imports on the Union market, but rather to allow imports to continue, albeit at non-dumped prices. This importer could thus continue to import RBM from Thailand, although subject to the payment of anti-dumping duties, and could partially or totally pass-on this cost increase to its customers.
- (94) It is however recognised that this could not so easily be achieved in view of the price sensitivity of the product and the competition from imports from other countries such as India. Moreover, given the structure of the Union market and the limited number of producers worldwide, it is indeed likely that this importer may face difficulties to switch to other sources of supply. It should however be noted that the portion of the RBM sales of the company as compared to its total turnover decreased during the injury investigation period, from around 40 % to 25 %, and, more importantly, the investigation revealed that the RBM activity has generated significant losses in the last years. In other words, there are doubts already today concerning the viability of the RBM business of this importer.
- (95) The fourth importer also claimed that in case of imposition of measures it would have to stop trading RBM because of the lack of alternative sources of supply. Sales of RBM in this case however only accounted for a very minor portion of the total turnover of the company during the IP, with only one person dealing with the product concerned, and it is very likely that the company could relatively easily maintain its overall activity even without trading RBM, if the imposition of measures would make it unavoidable.
- (96) It is thus concluded that even if the imposition of measures may indeed negatively affect the situation of the two importers above, it would however not significantly affect their overall economic activities.
- (97) The situation of the last importer is less obvious because around half of its sales of RBM are of Thai products (they represent a significant proportion of the total EU imports of RBM from Thailand), the other half being produced in the EU. Moreover, even if the company is mainly selling

lever arch mechanism, sales of RBM represent a non-negligible portion of the total turnover of the company (around 15 %). These sales are also considered crucial by the company because its customers often require suppliers being able to supply a full range of products.

(98) A significant part of the activity of the company thus rely on imports of RBM from Thailand, and in particular the less sophisticated products which are necessary to offer a complete products range, an important condition to maintain a sufficiently wide number of customers. According to the company, any imposition of measures may result in the end of its overall activity, and the loss of around 170 jobs. It should however be noted that this is the headcount for the total company and that it is estimated that the RBM activity represents less than 30 people.

(99) In this respect it should first be underlined that this company managed to improve its situation on the RBM market in the last years — its overall market share of imported products and own production increased from 9 % to 15 % during the injury investigation period — because it benefited from cheap and dumped imports.

(100) Secondly, it could be argued that this company could — at least partly — continue to import from Thailand, albeit at non-dumped prices, or even see the measures as an opportunity to increase its production, and/or production capacity, and sales of its own produced RBM. The company itself admitted this possibility, although with the nuance that it would still have to face the strong competition with Indian products, that are however imported by a variety of companies and not only by the trader related to the Union industry.

(101) It is clear that the company would indeed face a strong competition with Indian products which were on average during the IP only slightly more expensive than the Thai imports (+ 6 %). However, as long as it is not demonstrated that Indian imports are dumped, this should only be considered as the result of fair competition.

(102) Finally, the negative impact of measures against Thailand could nevertheless be somewhat limited if it would be possible to reach a certain balance between an increase of its own production and the continuation a certain level of imports, although at non-dumped prices. It is also recalled that 75 % of the turnover of the company is made of sales of other products.

(103) Given, the above, it is provisionally concluded that the imposition of provisional measures could only have a

significant negative impact on the situation of the last importer, i.e. the other Union producer, but the latter has largely benefited from the low priced and dumped imports from Thailand in the past, and the negative impact would essentially result from the competition with imports from India, which cannot be considered unfair competition.

8.5. Users

(104) One user replied to the questionnaire which revealed that around three quarters of its purchases of RBM were imports from countries other than Thailand, the rest being more or less equally distributed between the Union industry and Thailand.

(105) This user claimed that in case of imposition of measures, the sources of supply would be limited and a monopolistic situation would appear. This is based on the allegation that the Union industry and its related trader Bensons, an importer of Indian products, would become the quasi unique source of supply on the Union market. Some of the importers supported the same arguments.

(106) In this respect, it should firstly be noted that the fact that the number of suppliers on the Union market is limited is not as such a reason not to impose anti-dumping measures in order to remedy unfair trade. It is indeed considered that in the absence of measures the Union industry is likely to disappear, and this producer still represents 25 % of the sales on the EU market and can deliver specialised and standard products in the EU. It would thus also be in the interest of users that this industry continues to operate on the market.

(107) Secondly, despite the imposition of measures, it is not excluded that imports from Thailand, even if they may decrease in volume, will continue to be present on the Union market. Similarly, as explained above, the second producer in the Union may also likely be in a position to maintain or even expand its activity related to RBM.

(108) Finally, imports from India will continue and users, including the sole co-operating user, will be able to carry on sourcing RBM from this country. Even if the Union industry's related trader has a supply contract with the Indian producers, it does not mean that it is the exclusive importer/distributor of Indian products. On the contrary. Other companies indeed also distribute Indian RBM on the Union market, and users can directly purchase RBM from India. In this context

it should be underlined that about two thirds of the Indian exports to the EU are traded or purchased by companies other than Bensons, the trader related to the Union industry.

- (109) On the basis of the above, it was provisionally concluded that the effect of the anti-dumping measures against imports of RBM originating in Thailand will most likely not have overall a significant negative impact on the users of the product concerned.

8.6. Conclusion on Union interest

- (110) In view of the above, it is provisionally concluded that overall, based on the information available concerning the Union interest, there are no compelling reasons against the imposition of provisional measures against imports of RBM originating in Thailand. Even if the imposition of measures may have negative consequences on the situation of the other Union producer (see above in the section on importers) which benefited from dumped imports in the past, it is considered that this does not outweigh the need to remedy the negative effect of unfair imports on the situation of the Union industry.

9. PROVISIONAL ANTI-DUMPING MEASURES

9.1. Injury elimination level

- (111) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, provisional anti-dumping measures should be imposed in order to prevent further injury being caused to the Union industry by the dumped imports.
- (112) For the purpose of determining the level of these measures, account was taken of the dumping margins found and the amount of duty necessary to eliminate the injury sustained by the Union producers.
- (113) When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Union industry to cover its costs of production and to obtain a profit before tax that could be reasonably achieved by producers of this type in the sector under normal conditions of competition, i.e. in the absence of dumped imports, on sales of the like product in the Union. It is provisionally considered that a profit margin of 5 % on turnover could be regarded as an appropriate minimum which the Union industry could have expected to obtain in the absence of injurious dumping. This is the same percentage that was used in previous proceedings concerning the same product, and there are no information indicating that circumstances had changed in this respect and that this level would not be adequate in this case. On this basis, a non-injurious price was calculated for the Union producers for the like product.
- (114) The necessary price increase was then determined on the basis of a comparison, per product type, of the weighted

average import price of the exporting producer in Thailand, with the non-injurious price of the product types sold by the Union producers on the Union market during the IP. Any difference resulting from this comparison was then expressed as a percentage of the average CIF import value of the compared types. The resulting injury margin was higher than the dumping margin.

9.2. Provisional measures

- (115) In the light of the foregoing, and in accordance with Article 7(2) of the basic Regulation, it is considered that the provisional anti-dumping measures should be imposed on imports originating in Thailand at the level of the lower of the dumping and the injury margins in line with the lesser duty rule. In this case, the duty rate should accordingly be set at the level of the dumping margins found.
- (116) Consequently, the injury elimination margins and the dumping margins and the proposed rates of the provisional anti-dumping duty for Thailand, expressed on the CIF Union border price, customs duty unpaid, are as follows:

Exporting producer	Provisional AD duty rate
Thai Stationery Industry Co. Ltd., Bangkok, Thailand	17,2 %
All other companies	17,2 %

10. FINAL PROVISION

- (117) In the interest of sound administration, a period should be fixed within which the interested parties which made themselves known within the time limit specified in the Notice of initiation may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings concerning the imposition of duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive duty.

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on ring binder mechanisms currently falling within CN code ex 8305 10 00 (TARIC codes 8305 10 00 11, 8305 10 00 13, 8305 10 00 19, 8305 10 00 21, 8305 10 00 23, 8305 10 00 29, 8305 10 00 34, 8305 10 00 35 and 8305 10 00 36) and originating in Thailand. For the purpose of this Regulation, ring binder mechanisms shall consist of at least two steel sheets or wires with at least four half-rings made of steel wire fixed on them and which are kept together by a steel cover. They can be opened either by pulling the half rings or with a small steel trigger mechanism fixed to the ring binder mechanism.

2. The rate of the provisional anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the products described in paragraph 1 shall be 17,2 %.

3. The release for free circulation in the Union of the product referred to in paragraph 1 shall be subject to the provision of a security equivalent to the amount of the provisional duty.

4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

Without prejudice to Article 20 of Council Regulation (EC) No 1225/2009, interested parties may request disclosure of the

essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within 1 month of the date of entry into force of this Regulation.

Pursuant to Article 21(4) of Regulation (EC) No 1225/2009, the parties concerned may comment on the application of this Regulation within 1 month of the date of its entry into force.

Article 3

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

Article 1 of this Regulation shall apply for a period of 6 months.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 10 February 2011.

For the Commission
The President
José Manuel BARROSO
